

October 16, 2006

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0400899**

TIMOTHY AND YVONNE KRUPP

Code Enforcement Appeal

Location: 32818 Southeast 309th Street, Palmer

Appellant: Timothy and Yvonne Krupp
represented by **William N. Snell**, Attorney
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King County: Department of Development and Environmental Services,
represented by **Jim Toole**
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal with extended compliance dates
Examiner's Decision:	Grant appeal in part; deny in part with extended date

EXAMINER PROCEEDINGS:

Hearing Opened:	September 13, 2005
Hearing Closed:	September 13, 2005

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

(NOTE: The county code references in this report are to the code version current as of the report date. Upon the October 20, 2006 effectiveness of recently enacted Ordinance 15606, some of the home occupation regulations will have been amended. Those amendments appear to have an effect on certain aspects of the home occupation use at issue in this proceeding. See Finding 21.)

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On June 6, 2006, the King County Department of Development and Environmental Services (DDES) Code Enforcement Section issued a Notice and Order to Tim and Yvonne Krupp that alleged code violations at their RA-5-zoned property located at 32818 Southeast 309th Street (legally described as Lots 33 and 34 of the *Rainbow Trout Club* subdivision) in the unincorporated Kanaskat area. The Notice and Order cited the Krupps and the property with two violations of County code:
 - a) Operation of a construction and trade business together with a heavy equipment and truck repair business from a residential site that does not meet the requirements for a home occupation, in violation of KCC 21A.08.030, 21A.08.060 and 21A.30.080.
 - b) Placement of a commercial coach on a residential site and within an environmentally critical area (aquatic area) and its buffers, in violation of KCC 21A.08.030, 21A.08.060, 21A.24.200, 21A.24.358, 21A.28.020 and 21A.30.080.

The violations were required by the Notice and Order to be corrected by cessation of the “contractor storage yard” and heavy equipment repair business on the property or compliance with the home occupation requirements by August 7, 2006; and removal of the commercial coach or compliance of it with the home occupation requirements (including application for a building permit required by KCC 16.04.970) by July 6, 2006, with relocation of the commercial coach outside of the asserted required aquatic area buffer.

2. The Krupps, who operate portions of their Rhino Excavating and Trucking, Inc. business on their residential property (a main equipment storage yard lies elsewhere offsite), filed a timely appeal of the Notice and Order, asserting the following claims:
 - a) Operation of a construction and trade business is disputed.
 - b) Operation of a heavy equipment and truck repair on a residential site is disputed.
 - c) No commercial van is onsite (presumably referring to the allegation of violation by placement of a commercial coach, but possibly to the use of a commercial-type box trailer as a personal effects moving van; see parenthetical note at end of next finding). Instead, what is asserted to be a commercial coach is a temporary home office trailer placed onsite while the existing main residence onsite is under remodeling.
 - d) A home occupation is conducted onsite. All other activity regarding truck repair onsite is associated with personal hobby renovation of personal use trucks incidental to the residential use and is not conducted on a commercial basis.
 - e) The temporary home office trailer will be removed when the residential remodeling is completed (anticipated to be in three months).
 - f) The location of the temporary trailer relative the alleged critical area and buffer is disputed.

3. Much of the evidence presented into the hearing record regarding commercial truck servicing in the subject immediate area shows that truck parking is being conducted on Southeast 309th Street, a public road up to the point where takes a sharp (greater than 90-degree) bend in front of the subject property to turn into a driveway on adjacent property owned by the State and utilized by the Washington State Department of Fish and Wildlife (WDFW). All of the commercial truck washing alleged to be conducted by the Appellants is being performed on the WDFW property rather than on the subject property. Those activities (and whatever vehicle fluid changes, etc., are performed offsite as well) that are not being conducted on the subject property itself are not the subject of the instant Notice and Order and are not of direct relevance to the appeal. They therefore cannot be considered in deciding the appeal as they are not under the Examiner's jurisdiction in this case. (The preponderance of the evidence in the record demonstrates that a company van-type semi-trailer that was parked on the subject property for one week was used similar to a moving van for storage and transport of personal effects during the home remodel, and the van was washed while onsite. That van use and washing was incidental to the personal residential use of the property and does not constitute part of the operation of a heavy equipment repair business or a construction and trade business.)
4. Similarly, the complaints about road damage, road safety, drainage diversions and impacts, adverse air and water quality impacts, fisheries impacts, and noise impacts associated with truck travel and truck repair/maintenance operations on the public road and on the WDFW property are irrelevant to the Notice and Order issues under the Examiner's jurisdiction in the instant appeal case. Neither are complaints about property value degradation relevant in the case before the Examiner.
5. Contrary to the seeming understandings of neighboring residents/property owners and DDES code enforcement staff participating in this case, truck and heavy equipment repair is a use activity which is permitted to be conducted as a home occupation in zones which are not urban residential. ("The following activities are prohibited in urban residential zones only: ...Automobile, truck and heavy equipment repair;" [KCC 21A.30.080(E)(1)]) It may be that the DDES testimony that heavy equipment repair "is not allowed" was stated in the context that it is not allowed if it does not comply with the home occupation limitations (see findings below), but that was not expressly stated.¹
6. DDES essentially alleges two aspects of the home occupation regulations are violated by the use of the property:
 - a) The construction and trade business and heavy equipment and truck repair occupy a square footage area in excess of that permitted by the home occupation regulations.
 - b) A business-associated service vehicle often stored onsite exceeds the weight capacity limitation for a home occupation service vehicle.
7. "Residents of a dwelling unit may conduct one or more home occupations as accessory activities, only if...in A, F and RA zones[, t]he total indoor area of a home occupation shall not exceed 20 percent of the floor area of the dwelling unit. Areas with attached garages and storage buildings shall not be considered part of the dwelling unit for purposes of calculating allowable home occupation area..." [KCC 21A.30.080(C)(1)]

¹ It may also be that DDES was relying on the code version in effect prior to the October 9, 2004 effective date of Ordinance 15032, which last revised the home occupation regulations before the soon-to-be-effective Ordinance 15606 noted above, and that prior version may have disallowed heavy equipment repair in rural home occupations. The Examiner has not researched whether that is the case, because none of the evidence presented demonstrates the alleged violations occurring prior to the effective date of Ordinance 15032.

8. “Residents of a dwelling unit may conduct one or more home occupations as accessory activities, only if...[t]he home occupation or occupations use or store a vehicle for pickup of materials used by the home occupation or occupations or the distribution of products from the site, only if ...[t]he vehicle does not exceed a weight capacity of one ton...” [KCC 21A.30.080(I)(3)]
9. The current square footage of the defined portion of the existing dwelling unit permitted to be used for calculating allowable home occupation area is 1,850 square feet. Upon completion of the remodeling currently under way, the residence will have a floor area of 2,000 or 2,100 square feet (Mr. Krupp’s testimony varied on the issue). The commercial coach/trailer currently used as a temporary office onsite has 192 square feet in floor area.
10. The maximum square footage which may be used by a home occupation onsite is therefore currently 370 square feet and, depending on the final floor area of the residence upon completion of the remodeling, either 400 or 420 square feet.
11. There is no evidence in the record demonstrating how much of the commercial coach/trailer is utilized for home occupation (*i.e.*, business) use and how much is used for personal use. The Appellants’ testimony is that it is used for both purposes.
12. There is no evidence in the record demonstrating how much square footage is being used for heavy equipment repair and construction and trade business on the site. What can be found from the evidence in the record is that a portable truck washing equipment unit approximately half the size of a passenger car is housed in an adjacent shop building (adjacent to the main residence; the shop building is approximately 1,800 square feet in area) and that heavy equipment and truck repair appears to be conducted in one bay of the shop building. But there is no evidence which shows a persuasive calculation of how much floor area has actually been used for the construction and trade business (which from the evidence in the record would be found to consist of at least part of the temporary home office trailer and the outside storage of the service vehicle), or how much square footage is utilized by the heavy equipment and truck repair. It therefore cannot be found that the home occupation uses evident on the site, consisting of part of a construction and trade business and some heavy equipment repair, exceed the square footage limitations of the home occupation regulations.
13. The service truck at issue in the consideration of the home occupation conformity has not been shown by any factual evidence to exceed the one ton weight capacity limitation established by KCC 21A.30.080 (current version; but see Finding 21). If it did, that vehicle could not legally be utilized (used or stored) onsite in the conduct of the home occupation under the current regulations. (Testimony was received that frequent visits to the property are made by equipment repair products delivery vehicles, such as by oil products jobbers, but the Examiner finds no prohibition of such activity in the home occupation regulations.)
14. The DDES informational flyer submitted as Exhibit 13 by the Appellants, entitled “General Home Business Requirements,” appears to be out of date or erroneous since it states that in rural residential zones such as the RA-5 zone home occupations are “permitted to operate an auto repair and/or painting business and may *store* heavy equipment”(emphasis added), with the implication being that heavy equipment *repair* is not permitted. That is contradicted by the implicit provision in the code that in non-urban residential zones, heavy equipment repair is permitted as noted in Finding 5 above, citing KCC 21A.30.080(E)(1).

15. Complaints are made about the business operation's drivers visiting the site (presumably to the office and/or to the equipment repair operation) and temporarily parking their heavy trucks on the frontage of the property or on the front portion of the property. If the parking (as differentiated from movements associated with bringing equipment onsite or taking it offsite to/from the repair operation) is conducted on more than a genuinely *de minimis* (extremely minimal) basis, it would seem to constitute exterior storage of heavy equipment. If such exterior storage is allowed, the area occupied by that parking would count toward the square footage of the home occupation.
16. The Appellants have stipulated to the placement of the commercial coach on the subject residential site and intend to resolve the violation by removal within three months (stated as acceptable by DDES) upon the intended completion of the residential remodeling. Removal will resolve the portion of violation charge 2 of the Notice and Order found.
17. With respect to the location of the commercial coach/trailer "within an aquatic area and its buffers" as charged by the Notice and Order, the sole evidence submitted by DDES that is of any persuasion at all is the testimony by the DDES code enforcement officer that the commercial coach/trailer "is within the 100-foot buffer per DDES inspection." No corroborative documentation of that inspection, nor any particularized graphic depiction of the location within the asserted 100-foot buffer or in relation to the aquatic area (Spring Creek, a tributary to the nearby Green River) is offered. The only evidence offered by DDES to attempt to corroborate the assertion (which in testimony differed from the Notice and Order allegation of location actually within the critical area itself as well as the buffer) is a group of King County Geographic Information Systems (GIS) maps and aerial photographs. One GIS map (p. 1 of Exhibit 7) depicts that the subject property is mostly within an "area of potential wetland influence." The other GIS map (p. 2) shows that the entirety of the property is within a 500-foot Chinook distribution area buffer (presumably oriented to the Puget Sound Chinook salmon species designated as threatened under the Endangered Species Act (ESA), though that is not stated on the map). Neither map shows the 100-foot buffer stated as applicable in DDES's testimony, or its regulatory effect, and neither specifies or depicts the "aquatic area" cited by the Notice and Order. The terms "area of potential wetland influence" and "potential wetland" are not terms used in county code and have no regulatory effect. But not only are the GIS maps not shown by the record to have any regulatory effect of their characterizations and dimensional depictions, importantly they also come with a disclaimer of any warranty of accuracy. The GIS maps, particularly given their rather shorthand legend and use of non-regulatory terms, seem to serve effectively only as in-house, non-regulatory, generalized initial-screening-level informational maps which could trigger a more detailed (and legally reliable) examination of a land area for actual regulated aquatic and wetland resources.
18. Page 4 of Exhibit 7 is a 2002 large-scale aerial photograph which shows the subject area, but its annotated or computer-generated property boundary appears to be unreliably misaligned with the landmarks depicted in the photograph and it is not definitive or even generally illustrative of the subject coach location on the property or the dimensional relationship of the property and the commercial coach/trailer to Spring Creek.
19. The DDES photographs of the commercial coach/trailer (Exhibit 8) give no persuasive indication of the stream location in relation to the coach; in fact, there is no stream visible in the photographs, only dense vegetation, the coach and the residential site in its vicinity.

20. In summary, there is no corroborative documentary evidence or particularized testimony to support DDES's general statement in testimony that the property is within a 100-foot buffer "per DDES inspection." Though the veracity of the statement is not questioned, the sum total of the evidence presented to support the charge of the commercial coach/trailer's placement within an environmentally critical area and its buffers does not give nearly sufficient persuasion to find that such placement occurred and to impose corrective requirements, sanctions and/or penalties if the placement were concluded to be a violation. The evidence is simply insufficient to make a *prima facie* case in a code enforcement penalty action.
21. As an aside, the Examiner notes the County's October 10, 2006 enactment of Ordinance 15606, which becomes effective October 20, 2006 and would, among other things, revise the home occupation regulations. The Examiner notes provisions in the ordinance that in the subject RA-5 and other non-urban residential zones, the maximum floor area of interior usage by home occupations would be 20 percent of the dwelling unit; that a new allowance is made for outdoor area for home occupation activity, which on the subject property would be an allowance of 440 square feet, subject to certain setback and screening requirements; that parking and storage of heavy equipment would be permitted; and that the weight limitation for home occupation vehicles would be eliminated.²

CONCLUSION:

1. The portion of violation 2 charged in the Notice and Order addressed to the commercial coach being placed on a residential site in violation of the code is essentially uncontested and intended to be resolved by removal and shall be sustained as correct. With respect to the other charges of violation in the Notice and Order, they are not supported by the evidence in the record and shall be reversed. The Examiner shall impose a deadline for resolution of the commercial coach location on the site which will allow for its retention through a reasonable time period for completion of the remodeling as has been agreed to by the Appellants and DDES (although the Examiner shall grant a period of four months to account for the upcoming holiday periods).

DECISION:

The appeal is **DENIED** and the Notice and Order **SUSTAINED** with respect to the charge of placement of a commercial coach on a residential site, except that the deadline for regulatory compliance is extended as stated in the following order. The remainder of the charges in the Notice and Order (charge 1 in its entirety and the portion of charge 2 with regard to placement of the commercial coach within an environmentally critical area and its buffers) are **REVERSED**, and the appeal **SUSTAINED** in such regard.

ORDER:

1. Remove the commercial coach/trailer from the subject property *by no later than* **February 16, 2007**. Alternatively, if the commercial coach usage is able to comply with home occupation and other code requirements and granted a permit as may be required by the County building code by such date, it may be retained onsite.

² These observations are made solely as *dicta* (unenforceable comments) since the Notice and Order at issue and this decision predate the effectiveness of such ordinance. The Examiner would also not wish to prejudge any issues related to the new provisions prior to the presentation of evidence and argument in a case before him. But the revisions and new allowances may be of note to the parties and interested persons in this case with respect to future activity on the subject property.

2. No penalties shall be assessed against the Appellants or the property if the above condition is met. If the deadline stated in the above condition is not met, DDES may assess penalties against the Appellants and the property retroactive to the date of this order.

ORDERED this 16th day of October, 2006.

Peter T. Donahue
Interim King County Hearing Examiner

TRANSMITTED this 16th day of October, 2006, via certified mail to the following:

William N. Snell
Attorney at Law
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Seattle WA 98101-32078

Timothy & Yvonne Krupp
32818 SE 309th St.
Palmer WA 98051

TRANSMITTED this 16th day of October, 2006, to the following parties and interested persons of record:

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NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The

Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE SEPTEMBER 13, 2006, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0400899.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing was Jim Toole, representing the Department; William N. Snell representing the Appellant, Timothy Krupp, the Appellant; Bill Rickard and Linda Rude.

The following Exhibits were offered and entered into the record:

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|----------------|---|
| Exhibit No. 1 | Staff report to the Hearing Examiner for August 9, 2006 |
| Exhibit No. 2 | Copy of the Notice and Order issued June 6, 2006 |
| Exhibit No. 3 | Copy of the Notice and Statement of Appeal received by DDES on June 23, 2006 |
| Exhibit No. 4 | Copies of codes cited in the Notice and Order |
| Exhibit No. 5 | Copy of corporate registration information for Rhino Excavating & Trucking Inc. from the Washington Secretary of State |
| Exhibit No. 6 | Copies of parcel information from the King County Department of Assessments |
| Exhibit No. 7 | GIS maps (2) showing area of subject property and 1) wetland/aquatic areas and 2) Chinook Distribution; and 2002 aerial photos (2) of subject area showing 1) area streets and 2) subject property. |
| Exhibit No. 8 | Photographs (2 color copies) of subject property |
| Exhibit No. 9 | Packet of photographs from William Rickard depicting activities of Rhino Excavating & Trucking Inc. |
| Exhibit No. 10 | Packet of photographs, field investigation report, various health studies and reports from Linda Rude |
| Exhibit No. 11 | OIC Equipment Inc. invoice showing purchase of office trailer by Tim Krupp |
| Exhibit No. 12 | Photograph of a Toyota Landcruiser restored by Timothy Krupp and a flyer for a truck for sale by Tim Krupp |
| Exhibit No. 13 | DDES document regarding General Home Business Requirements (not dated) |

PTD:ms

E0400899 RPT